



STATE BUILDING CODE TECHNICAL REVIEW BOARD

APPEAL PARTICIPANT GUIDE

NOVEMBER 2021

VIRGINIA DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

**DIVISION OF BUILDING AND FIRE REGULATION
STATE BUILDING CODES OFFICE
MAIN STREET CENTRE
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RICHMOND, VIRGINIA 23219**

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Part 1 – Overview

The purpose of this guide is to assist persons involved in appeals before the State Building Code Technical Review Board (Review Board). It provides information on each aspect of the appeal process, including procedures used in the hearings before the Review Board.

The State Building Code Technical Review Board (Review Board) consists of 14 citizens appointed by the Governor to ensure the Virginia building code is administered fairly to the citizens of Virginia. The organizations represented by the Review Board members are the American Institute of Architects Virginia, Virginia Society of Professional Engineers, Home Builders Association of Virginia, Virginia Branch of the Associated General Contractors of America, Virginia Building and Code Officials Association, State Fire Chiefs Association of Virginia, Virginia chapters of the National Apartment Association, and Virginia Association of Plumbing-Heating-Cooling Contractors. The primary purpose of the Review Board is to hear appeals from enforcement actions under the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia Industrialized Building Safety Regulations, and Virginia Amusement Device Regulations. The Review Board generally meets on the third Friday of each month when they have business.

Virginia building and fire codes are enforced by either a local government enforcement agency (e.g., code inspections office) or a state enforcement agency (e.g., the Virginia State Fire Marshal's Office; Virginia Department of General Services, Division of Engineering and Buildings; Virginia Department of Housing and Community Development, State Building Codes Office). Both the building and fire codes contain provisions advising of the right to appeal and directing aggrieved parties to the appropriate appeals board. Where there is a local government enforcement agency, appeals must first be heard by a local board of building code appeals (local appeals board) prior to being appealed to the Review Board.

Applicants for appeals to the Review Board are typically those persons or entities regulated under the building and fire codes who disagree with an enforcement action and were not granted relief by the local appeals board; however, sometimes the applicant is the code official when the code official does not agree with the decision of the local appeals board. Applications for appeal to the State Review Board must be submitted within 21 calendar days of receipt of the decision being appealed. Applications for appeal to the Review Board arising from the enforcement of the code from the State Fire Marshal's Office (SFMO) or any local fire code enforcement, if no local board of appeals exists, shall be made to the State Review Board within 14 calendar days of receipt of the decision to be appealed. Once a completed appeals application to the Review Board is filed, it generally takes three to four months to process the appeal and schedule a hearing before the Review Board.

Part 2 –Application for Appeal

To initiate an appeal to the Review Board, the applicant must submit:

- A. A completed and signed Application for Appeal (application) to the State Building Codes Office (SBCO) located within the Virginia Department of Housing & Community Development (DHCD).
- The application is available from the Review Board’s website:
<https://www.dhcd.virginia.gov/sites/default/files/Docx/sbctrb/file-appeal/appeal-application-may-19.pdf>
 - The application is also available upon request from staff at sbco@dhcd.virginia.gov or by telephone request at 804-371-7150
 - The application may be submitted by email, regular mail, fax, or in person. Email submittal is the easiest, fastest, and best option for submitting the appeals application.

Note 1: The applicant must provide all of the information listed on the application for the application to be considered filed. When necessary, staff will work with the applicant to ensure the correct parties and their respective contact information is listed on the application, as this information is necessary for staff to process the application.

B. Additional documents to be submitted with the application:

- A copy of the enforcement action being appealed (i.e. Notice of Violation; Inspection Notice; etc.)
- A copy of the application for appeal to the local appeals board
- A copy of the local appeals board decision (i.e. Written Statement of the local appeals board)
- Names, addresses, phone numbers, and email addresses for all parties to the appeal

Note 1: Applicants are encouraged to submit photographs or other documentation relative to the appeal not listed above.

Note 2: Staff will correspond via email with all parties in an appeal to request they submit any information they believe to be relevant to the appeal.

Part 3 – Processing the Appeal

Staff will review the information submitted with an application for appeal to determine the appropriate method for processing the application. The method will depend on the nature of the appeal and the circumstances. One of the following methods, or a combination of the following methods, may be employed in processing new appeals.

Preliminary Hearing

If staff, or an opposing party, questions whether an appeal is valid due to a jurisdictional issue such as timeliness, an improper appealing party, improper grounds (e.g., not appealing an application of the code), an appearance of the appeal not being properly before the Review Board (e.g., violations which were voluntarily corrected), aggrievement, etc., staff may schedule a Preliminary Hearing before the Review Board to determine whether the appeal will be dismissed

based on the jurisdictional issue. In such cases, staff drafts a Staff Document, which outlines the history, background, and timeline of the appeal. The Staff Document also identifies the jurisdictional issue(s) to be decided at the preliminary hearing. To be clear, staff does not make any findings, recommendations, or final decisions in the Staff Document. Staff then distributes the Staff Document and Record of the Appeal, a collection of the documents submitted by both parties, with a deadline for the final submittal to the parties with the opportunity to submit corrections, objections or additions to the Staff Document, and to submit written arguments concerning the appeal. Staff may not make the suggested changes to the Staff Document if staff feels the revisions affect the neutral nature of the Staff Document; however, all submittals are provided to the Review Board. Staff then schedules the preliminary hearing.

Formal Hearing

In cases where the issues on appeal appear to be clear and concise and involve technical provisions of the codes, staff may process the appeal by contacting the parties via email and giving them an opportunity to submit any documents they believe the Review Board members need to decide the case. Once staff receives the documents, staff drafts a Staff Document outlining the background, history, and timeline of the appeal. The Staff Document also identifies the issue(s), which appear to be present in the appeal. To be clear, staff does not make any findings, recommendations, or final decisions in the Staff Document. Staff then distributes the Staff Document and Record of the Appeal, a collection of the documents submitted by both parties, with a deadline for the final submittal to the parties with the opportunity to submit corrections, objections or additions to the Staff Document, and to submit written arguments concerning the appeal. Staff may not make the suggested changes to the Staff Document if staff feels the revisions affect the neutral nature of the Staff Document; however, all submittals are provided to the Review Board. Staff then schedules the formal hearing.

Informal Fact-Finding Conference for Formal Hearings

When the issues in an appeal appear to be unclear and/or complex to staff, a proceeding known as an Informal Fact-Finding Conference (IFFC) will likely be scheduled. The purpose of the IFFC is to clarify the facts and history of the appeal and/or to identify the potential issue(s) for consideration by the Review Board. Typically, staff travels to the jurisdiction where the appeal originated. Staff contacts the local government office to secure a meeting room for the IFFC. If an attorney represents a party, the attorney should attend the IFFC. Staff sends a Notice of Informal Fact-Finding Conference to the parties, which will include the date, time and location of the meeting. If staff is aware that an attorney is involved, staff sends a Notice of Informal Fact-Finding Conference to the attorney(s) as well. Staff also sends a courtesy copy of the hearing notice via email to all parties and the attorneys involved.

Staff facilitates the IFFC. Generally, staff starts the IFFC with an explanation of the code enforcement process, an overview of the arrangement of the codes involved in the appeal situation, an overview of the appeals process, and lastly an overview of how the IFFC is facilitated. During the IFFC, the appellant and the appellee have the opportunity to describe the issues appealed. Staff may request additional documents from the parties, which relate to the issues under appeal. During the IFFC, no arguments or testimony will be heard. To be clear, staff does not make any findings, recommendations, or final decisions during the conference.

After the IFFC, staff will draft and distribute a Staff Document and Record of the Appeal and schedule the formal hearing,

Part 4 – Distribution of the Documents

Staff generates an agenda package for the Review Board meeting once staff receives the final submittals from all parties or once the deadline for final submittal has passed. Approximately two to three weeks before the scheduled hearing, staff sends out a Notice of Hearing (or Preliminary Hearing) to the parties, which will include the date, time, and location of the meeting. Staff also emails a courtesy copy of the Notice of Hearing to the parties and attorneys. During that same time, the excerpt from the agenda package, along with a memo from the Chairman addressing certain aspects of the appeal hearing, and a summary of the Order of Events policy are sent to the parties (and their attorney, if represented).

Part 5 – Appeal Hearing

Appeals hearings are generally heard in the order in which staff received them; however, if a Preliminary Hearing is scheduled, it is held first. The order of events policy established an order for the presentation of testimony in the appeal hearing, which includes the time limits for each portion of the hearing listed below.

Preliminary Hearing

Opening statement and Testimony – 8 minutes

Cross examination – 5 minutes

Review Board Q&A – 13 minutes

Closing Statement/Final argument – 2 minutes

Appeals Hearing

Opening statement and Testimony – 20 minutes

Cross examination – 10 minutes

Review Board Q&A – 30 minutes

Closing Statement/Final argument – 5 minutes

In general, the appellant (the party appealing) and their witnesses provide testimony first, and then the appellee (the opposing party; typically, the code enforcement agency) may question the appellant and appellant's witnesses. Next the appellee and their witnesses provide testimony then the appellant may question the appellee and the appellee's witnesses. After the testimony of both parties, the Review Board members may question any of the parties or their witnesses. Once the Review Board completes the questioning of the parties and their witnesses, both parties present their closing statements. Typically, the appellant provides their closing statement first, followed by the appellee. After both parties present their closing statements, the Chair closes the hearing.

Part 6 – Review Board Decision

After the appeal hearing is closed, the Review Board enters into deliberations to render a decision concerning the appeal. When there is more than one hearing scheduled for a particular meeting, the Chairman decides whether the deliberations occur immediately following each appeal or if all deliberations occur after all appeals have been heard. Regardless of whether the deliberations occur right after the appeal hearing or after all the appeal hearings, the deliberations are conducted in open session. The parties and public may attend the deliberations; however, no further testimony is heard. Once the Review Board renders its decision, staff drafts the written decision, known as the Final Order. Review Board members consider the Final Order at the next scheduled meeting. After the Review Board approves the Final Order and the Chair signs it, the final order is distributed to the parties.

Part 7 – Rights of Further Appeal

In accordance with the applicable laws, a statement concerning further right of appeal of the Review Board’s decision to circuit court is included in the Final Order. The language from the Final Order is as follows:

“As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with W. Travis Luter, Sr., Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.”

Part 8 – Miscellaneous Considerations

This portion of the guide addresses, issues which have arisen while processing an appeal and notes how the Review Board or Review Board staff have historically addressed the issues.

Is it necessary to have an attorney represent a party in an appeal?

No; however, the parties can utilize attorneys.

Can the Review Board hear an appeal if the local appeals board has not heard it?

Yes. If the law(s) or code(s) under which the appeal is filed requires a local board decision prior to the Review Board hearing an appeal, every effort will be made to ensure the local appeals board hears the appeal. If the timeframe for the local appeals board hearing passes with no action, an appeal may be filed with the Review Board. Review Board staff will contact the locality to inform them of their duty and responsibility under the code. If the locality refuses to schedule a hearing with the local appeals board, staff will process the appeal. The Review Board may accept jurisdiction of the appeal or remand the appeal back to the local appeals board to

hear the appeal. If the local board, within the stipulated timeframe, still does not hear the case, the Review Board may accept jurisdiction of the appeal.

Can the Review Board hear issues that the local board has not heard in an appeal?

Yes. As long as they are issues related to the application of the code, which were appealed, the Review Board can generally consider them, even if not considered by the local board. The Board has authority to remand appeals back to a local board at its discretion.

How are requests for continuances handled?

The policy of the Review Board is that if all parties agree to a continuance, then the appeal hearing is taken off the docket by staff. If all parties do not agree to a continuance, then staff must forward the continuation request to the Review Board Chair for consideration.

Additionally, if the Chair denies a party's request for a continuance, and the party wishes to present their request for continuance to the Review Board, they may do so at the beginning of the hearing before the Review Board. The parties have the opportunity to provide testimony before the Review Board. The Chair, at his/her sole discretion may rule on the continuance request or may seek input from the other Review Board members. If the continuance request is denied, the hearing will take place as scheduled.

Part 9 – Contact and Other Information

The application for appeal to the Review Board can be downloaded from the Appeals page of the agency website listed below. Also available on the website is general information about the Review Board and its members, a list of past decisions, and past meeting minutes. Staff may be contacted at any time during normal business hours at the phone number or email address listed below.

Virginia Department of Housing and Community Development
Division of Building and Fire Regulation
State Building Codes Office
Main Street Centre
600 E. Main Street, Suite 300
Richmond, Virginia 23219
Telephone: (804) 371-7150

Website: <https://www.dhcd.virginia.gov/state-building-code-technical-review-board-sbctrb>

Email: sbco@dhcd.virginia.gov